

Legal Guide to Investing in Iraq

I. Introduction

Iraq is in the midst of changes to its legal, economic, and security environments and institutions. These changes create both uncertainties and possibilities for foreign investors. Parts of the country are experiencing rapid economic growth — creating new opportunities for foreign investment.

Nevertheless, Iraq continues to present unique challenges for the foreign investor. The World Bank, in its annual rankings of 183 economies in the world for 2011 ([see www.doingbusiness.org](http://www.doingbusiness.org)), ranked Iraq as follows:

<u>Criteria</u>	<u>Rankings</u>
Starting a Business	174
Dealing with Construction Permits	102
Registering Property	96
Getting Credit	168
Protecting Investors	120
Paying Taxes	54
Trading Across Borders	179
Enforcing Contracts	141
Closing a Business	183

These rankings, most of which actually worsened from 2010 to 2011, indicate the daunting challenge faced by Iraq's legislators and administrators as they attempt to encourage investment by improving the political, legal, and economic factors that create a model investment climate.

What specifically should foreign investors look for in a host country's investment climate? The State Department's description of the basic benefits under the U.S. bilateral investment treaty (BIT) program (<http://www.state.gov/e/eeb/ifd/bit/>) provides one answer. U.S. BITs seek, among other things, adherence to the following principles with respect to investments:

- Investors and their "covered investments" are entitled to be treated as favorably as the host Party treats its own investors and their investments and as favorably as it treats investors and investments from any third country;
- Clear limits on the expropriation of investments and provision for payment of prompt, adequate and effective compensation when expropriation takes place;
- Transferability of funds into and out of the host country without delay using a market rate of exchange;
- Limitations on the imposition of "performance requirements" that require investors to adopt inefficient and trade-distorting practices (such as local content

- requirements or export quotas) as a condition for establishment, acquisition, expansion, management, conduct, or operation of investments;
- Providing investors from both Parties the right to submit an investment dispute with the treaty partner's government to international arbitration. There is no requirement to use that country's domestic courts; and
- Covered investments have the right to engage the top managerial personnel of their choice, regardless of nationality.

In addition, U.S. BITs provide for a "minimum standard of treatment": treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Iraq's investment laws do not yet strictly adhere to these high standards. However, as will be described below, Iraqi law does establish measurable standards of protection for foreign investors. This Guide describes in summary form the principal laws governing investment in Iraq, and highlights areas that may be of interest to investors as they begin to explore investment projects in Iraq.

II. Historical Background

In the Saddam Hussein era, Iraq maintained a restrictive investment regime. Only Iraqi citizens could form a company or act as a commercial agent for foreign companies unwilling or unable to establish an office in Iraq. Branch offices of foreign companies could be opened, but only subject to strict and bureaucratic import, export, and foreign exchange controls. Although the Law on Arab Investments No. 62 of 2002 provided substantial tax incentives for investment, guaranteed against nationalization and expropriation, and allowed both repatriation of profits and capital and free import and exports of goods, the application of these provisions was limited to Arab investors. In addition, the Iraqi constitution under Saddam Hussein prohibited private ownership of both natural resources and the "basic means of production," and prohibited foreign ownership of real property. Finally, the Iraqi Companies Law prohibited investment in, and establishment of, companies in Iraq by foreigners who were not resident citizens of Arab countries.

In 2003 the Coalition Provisional Authority (CPA) issued Order 39, governing foreign investment in Iraq. The Order, the text of which can be found at http://www.iraqcoalition.org/regulations/20031220_CPAORD_39_Foreign_Investment_.pdf, provided for national treatment for foreign investors except in the natural resources, banking, and insurance sectors, but also limited the right of foreign investors to own real property. Additionally, foreign investors were prohibited from engaging in retail sales until they deposited \$100,000 in a non-interest-bearing Iraqi bank account. Order 39 also provided for the right of foreign investors to establish an investment directly or through a subsidiary and the right to transfer abroad all funds associated with an investment.

Order 39 was superseded and replaced by the 2006 Iraqi national investment law, which will be discussed in greater detail below. The 2006 Iraqi national investment law was subsequently amended in the First Amendment on Investment Law, which was passed on January 4, 2010.

III. International Agreements and Organizations

Iraq is a party to a number of international conventions and agreements related to international investment. These include:

- International Monetary Fund (IMF)
- International Standards Organization (ISO)
- Permanent Court of Arbitration (Hague)
- World Customs Organization (WCO) (accession/ratification 1990)
- Paris Convention for the Protection of Industrial Property (1975)
- World Intellectual Property Organization (WIPO)
- United Nations Convention on Contracts for the International Sale of Goods (CISG) (entered into force for Iraq in 1991)
- Global System of Trade Preferences
- United Nations Convention against Corruption (2008)
- League of Arab States Convention on Commercial Arbitration (1987)
- Riyadh Convention on Judicial Cooperation (1983)

IV. Investing in Iraq Today

There are a variety of legal aspects of Iraq's investment climate that should be of interest to the potential investor, including those factors listed in section I. These are discussed below.

A. National treatment

1. Constitutional Provisions

The new Iraqi constitution, approved by national referendum on October 15, 2005, provides no definitive statement on national treatment, i.e., the right of foreign investors to be treated no less favorably than domestic investors. The constitution does, however, contain commitments to general principles that could lead Iraq to implement the national treatment standard.

For example, Article 25 contains language “guarantee[ing] the reform of the Iraqi economy in accordance with modern economic principles to [e]nsure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector” Article 26 provides that the State shall guarantee the “encouragement of investment in the various sectors.”

In addition to being aware of the constitution's lack of a clear national treatment commitment, foreign investors should also consider the constitution's treatment of federalism, in the event that there is a conflict between national and regional legislative treatment of foreign investment.

Article 114 lists competencies shared between the federal authorities and regional authorities. These shared competencies include the formulation of development and general planning policies, which would appear to cover the actions of the national and regional investment commissions under the 2006 Investment Law, as amended (see below). However, Article 115 provides that in case of a dispute involving a shared power, priority shall be given to the regional law.

Article 110 gives the federal government the exclusive right to “formulat[e] foreign sovereign economic and trade policy.” This provision indicates that if Iraq were to enter into an international investment agreement with a national treatment provision (as is found in the international agreements of most capital-exporting countries), the provisions of the agreement would likely override regional legislation to the contrary.

These constitutional provisions indicate that if national treatment is accorded at the regional level but not at the federal level, the regional treatment will prevail; however, national treatment accorded at the federal level through an international agreement will likely prevail over a contrary regional provision.

2. *The 2006 Investment Law*

The 2006 Iraqi national investment law, as amended, is now the principal national legal enactment governing investment in Iraq. The investment law provides for only a limited form of national treatment. Article 10 provides, “The Iraqi or foreign Investor enjoy the same privileges, facilities, and guarantees, and submit to the obligations stated in this law.” Article 10 is not, however, a statement of unqualified national treatment for foreign investors, as shown by other provisions of the law.

Along with the right to remove currency from Iraq, exchange shares and bonds on the Iraqi Stock Exchange, acquire membership of private stock and mixed companies (including those companies that own properties), open bank accounts in Iraq, and insure investment projects, Article 11 provides to foreign investors the right to lease real estate for up to fifty years (a term that may be renewed or extended with the approval of the national investment commission to be established by the law). This provision, when read with Article 10, makes it clear that foreign investors cannot own land for investment purposes in Iraq. As amended, the investment law does allow foreign investors to hold shares in land-owning Iraqi entities. A decree signed December 28, 2010 by Prime Minister Maliki is intended as the implementing regulations for the amendments to the 2006 Iraqi national investment law, and further clarifies that investors may obtain land for residential projects but may not own land for non-residential, commercial projects.

Article 22 provides that foreign investors will obtain the benefit of additional protections if Iraq enters into international agreements that provide investor protections. This article confirms the constitutional provision that entering into an international agreement is a potential legal route to according broader national treatment or other benefits to foreign investors.

Article 29 exempts from the investment law's coverage investment in oil and gas extraction and production, and in the banking and insurance sectors. As a result, investors should be aware that there is no guarantee of national treatment for investment in those sectors.

3. *Iraqi Kurdistan Investment Law*

In contrast to the ambiguity of the national legislation, the Iraqi Kurdistan investment law (Law. No. 4 of 2006) explicitly establishes in Article 3 the national treatment principle: "The foreign investor and capital shall be treated as the national investor and capital. The foreign investor shall have the right to own the entire capital of any project that he establishes in the region under this law."

Article 19 of the Kurdish investment law bars any investors from owning land that contains oil, gas, or any precious or heavy mineral resources. However, Article 4 allows foreign investors to own land in the region outside of the oil sector, apparently contrary to the national law's limitation restriction on foreign ownership of land to that used for residential projects. Additionally, the Kurdish law allows 100% foreign ownership of companies in the banking and insurance sectors, sectors that are specifically outside the scope of the national law. Article 115 of the constitution, as mentioned above, appears to give priority in these disputes to the regional law, but since this provision has not been tested in practice it is not certain which law will apply.

B. Expropriation

Article 23 of the Iraqi constitution contains the following standard for expropriation: "Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law." This standard is similar to (but not the same as) that found in the constitutions of larger, capital-importing economies. Article 12 of the 2006 investment law guarantees that investment projects covered by the investment law will not be seized or nationalized, except pursuant to a final judicial judgment. The Kurdish investment law does not address this subject.

The expropriation standard governing the international investment agreements of most capital-exporting countries is that expropriation will be carried out only for a public purpose, with due process of law, and upon payment of prompt, adequate, and effective compensation to the investor. Foreign investors should note the more limited guarantees in Iraqi law and closely monitor Iraq's actual expropriation practice.

C. Performance Requirements

International investment agreements involving capital-exporting countries typically prohibit each party from imposing or enforcing a specific list of performance requirements, whether the requirements are mandatory or associated with an advantage or benefit. For example, modern U.S. BITs, and the investment chapters of many U.S. free trade agreements, contain specific prohibitions and restrictions regarding enumerated performance requirements. Iraq is currently subject to no such disciplines in its bilateral and multilateral agreements.

The WTO Agreement on Trade-Related Investment Measures (TRIMs Agreement) prohibits a limited list of performance requirements. The primary prohibitions in the TRIMs Agreement relate to requirements that an investor -

- purchase or use products of domestic origin or from any domestic source;
- limit its purchases or use of imported products to an amount related to the volume or value of local products that it exports;
- limit its import of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
- limit its import of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the company; or
- limit its export or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value.

Iraq applied for membership in the WTO in July 2004, and submitted its “Memorandum on the Foreign Trade Regime” in September 2005. It submitted written replies to detailed questions from WTO Members in November 2006, and answered a second set of questions in January 2008. A number of Working Party meetings on Iraq’s accession to the WTO have been held. Thus far, no existing Iraqi laws appear to create significant issues under the TRIMs Agreement. However, the broad legislative discretion for licensing projects that is incorporated into the 2006 Investment Law could lead to TRIMs issues in the future.

D. Transfers

Capital-exporting nations seek a commitment in their agreements that the other party permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Again, modern U.S. BITs, and the investment chapters of many U.S. free trade agreements, contain specific provisions providing for prompt and free transfers of funds associated with investments.

According to the State Department, at
<http://www.state.gov/e/eeb/rls/othr/ics/2010/138084.htm>:

The currency of Iraq is the Dinar (IQD - sometimes referred to as the New Iraqi Dinar). The Iraqi authorities confirm that in practice there are no restrictions on current and capital transactions involving currency exchange as long as underlying transactions are supported by valid documentation. The International Monetary Fund's annual publication on Exchange Arrangements and Restrictions states that: "Restrictions on capital transactions are not enforced; however, documentation and reporting requirements apply." The National Investment Law contains provisions that, once implemented, would allow investors to bank and transfer capital inside or outside of Iraq.

The primary provision of the 2006 Iraqi investment law governing transfers is Article 11, which grants foreign investors the right to take out of Iraq the capital brought in, as well as proceeds, but only "in accordance with the provisions of this law and pursuant to the instructions of the Central Bank of Iraq in an exchangeable currency after paying all his taxes and debts to the Iraqi Government and all other authorities."

E. Minimum Standard of Treatment

International investment agreements involving capital-exporting countries typically include a "minimum standard of treatment" provision. The current version in U.S. BITs obligates each party to accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security. "Fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; "full protection and security" requires each Party to provide the level of police protection required under customary international law.

This is a standard of customary international law to which Iraq, as a sovereign state, is subject. However, whether Iraq meets this international-law obligation depends more on the day-to-day behavior of its executive and judicial branches than on its legislation, and, in the absence of clear bilateral undertakings in this area, there is no clear enforcement mechanism immediately available to U.S. investors. Iraq is still an unsettled place in which to do business, as the World Bank's Doing Business rankings (above) indicate. Corruption and transparency may also factor into a country's compliance with this standard.

F. Investment disputes

In its free trade agreements and BITs, the United States insists on establishing the right of an investor to submit an investment dispute with the host government to international arbitration. In the absence of clear bilateral undertakings in this area, this right has not yet been clearly established for U.S. investors in Iraq.

Iraq's Higher Judicial Council established a special court in Baghdad to adjudicate disputes involving foreign investors. Additional branches of the court are planned for Basrah and Mosul.

G. Senior Management and Boards of Directors

In its free trade agreements and BITs, the United States insists on establishing the right of an investor to engage and retain the top managerial personnel of his or her choice, regardless of nationality. Again, in the absence of clear bilateral undertakings in this area, this right has not yet been clearly established for U.S. investors in Iraq, and in fact, provisions of the 2006 Investment Law, discussed in greater detail below, suggest that this area may be problematic for U.S. investors.

H. Intellectual Property Rights

A key characteristic of an investment regime is the degree of protection it provides to intellectual property rights (IPR) holders. Iraq's IPR regime is in flux. A good summary is provided by the State Department in its 2010 Investment Climate Statement, found at <http://www.state.gov/e/eeb/rls/othr/ics/2010/138084.htm>:

Iraq currently does not have adequate statutory protection for intellectual property rights (IPR). The GOI is in the process of developing a new IPR law to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The draft law covers patent, trademark and copyright. It is hoped that strong implementing regulations will help consolidate IPR protection functions, which are currently spread across several ministries, into a "one-stop" IPR office. (The Central Organization on Standards and Quality Control (COSQC), an agency within the Ministry of Planning, handles the patent registry and the industrial design registry; the Ministry of Culture handles copyrights; and the Ministry of Industry and Minerals houses the office that deals with trademarks.) Although the new draft will offer adequate statutory IPR protections, it has been stalled in the constitutional review process since mid-2007. The GOI's ability to enforce IPR protections remains weak.

Iraq is also a signatory to several international intellectual property conventions, and to regional or bilateral arrangements which include:

-- Paris Convention for the Protection of Industrial Property (1967 Act) ratified by Law No. 212 of 1975.

-- World Intellectual Property Organizations (WIPO) Convention; ratified by Law No. 212 of 1975. Iraq became a member of the WIPO in January 1976.

-- *Arab Agreement for the Protection of Copyrights; ratified by Law No. 41 of 1985.*

-- *Arab Intellectual Property Rights Treaty (Law No. 41 of 1985).*

I. The Oil and Gas Sector

As discussed above, the Iraqi constitution does not provide for national treatment in the oil and gas sector, and the 2006 investment law specifically excludes that sector from the law's coverage.

Iraq's relevant legal authorities on investment contain other petroleum-related provisions. Article 111 of the Iraqi constitution provides that "oil and gas are owned by all the people of Iraq in all the regions and governorates." Article 112 provides for joint management by the federal and regional governments of oil and gas extracted from "present" fields, and distribution of revenues in proportion to population distribution, taking into account unjust deprivation by the former regime and wartime damage. Article 112 also calls for the joint formulation (by federal and regional authorities) of strategic policies to develop the oil and gas sectors.

The Kurdish Regional Government (KRG) has argued that the constitution's reference to "present" fields means that the regional governments retain the right to manage both non-producing fields and future fields. In the past two years, the KRG has signed investment contracts in the petroleum sector with a number of foreign investors. The central government considers these contracts null and void and has stopped issuing payments to companies operating within the Kurdish region. The dispute has escalated, and no specific national oil and gas strategic policies have been developed.

Iraq's Council of Ministers approved a draft hydrocarbon law in 2007 that would establish revenue-sharing among regions, a process for federal-regional cooperation, and transparency through public disclosures of contracts and associated revenue and payments. (Zalmay Khalilzad, *A Shared Stake in Iraq's Future*, Wash. Post, Mar. 3, 2007, at A15). However, the law has not been enacted, though it is reported that it will soon be up for consideration by the parliament. (Ben Lando, *Oil Talks Resume in Iraq in June*, UPI, May 30, 2008).

Foreign investors in this sector could take the legally risky step of contracting with the KRG, or could deal only with the central government. In either case, such an investment is outside the scope of the 2006 investment law and so it is unclear what legal rights and protections investors could depend on when investing in the petroleum sector.

J. Other Iraqi Legal Provisions Impacting Investors

1. *The Iraqi Constitution*

Article 13 provides that the constitution “is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception” and regionally-based constitutions and laws that contradict the constitution are considered void. Article 23 of the constitution provides that the owner of private property “shall have the right to benefit, exploit and dispose of private property within the limits of the law.”

2. *2006 Investment Law*

As indicated above, the 2006 Iraqi investment law replaced CPA Order 39, was amended by the First Amendment on Investment Law in 2010, and is now the principal national legal enactment governing investment in Iraq. The law establishes investor rights and responsibilities as well as the legal grounds for institutionalizing investment in Iraq. Its goal is to promote both domestic and foreign investment. The law: provides for the creation of commissions to license, monitor, and encourage investment; establishes a regionalism principle, allowing regional governments to establish their own investment laws and policies; confers the right to enter and exit Iraq while working on an investment project; establishes time-limited exemptions from taxes and fees for investors; obligates investors to notify the investment commissions of their activities and to give priority of employment to Iraqis; and allows investors to obtain land for residential projects but not for non-residential, commercial projects. Investors should note that the law does not cover the petroleum sector. Additionally, implementation of some of the law’s provisions has not yet begun, and it is currently unclear when full implementation may be achieved.

A more detailed outline of the coverage and application of the 2006 law, as amended, is as follows:

a. *National and Regional Investment Commissions*

The investment law calls for the establishment of a National Commission for Investment (Commission), comprised of nine members, and instructs the Commission to prepare an overall national strategic policy for investment and lists of investment opportunities. The Commission was formed in 2008.

In addition, the law allows Iraqi regions, and governorates not organized in a region, to form investment commissions that will have the authority to grant investment licenses, conduct investment planning, and promote investment in their areas. Provincial investment commissions were established in 2008. These regional commissions must act within the overall provisions of the national investment law and in so doing must coordinate and consult with the national Commission. Investors should note that this provision may be inconsistent with the constitutional provisions described above that give priority in disputes to regional legislation

b. Licensing

The investment law establishes a licensing system for investment projects. Article 7 provides that the system will be administered by the National Commission for Investment. The monetary threshold for projects requiring a license from the Commission is to be set by the Council of Ministers (or by a regional Council of Ministers, where applicable). The Commission must decide on whether to grant a license within 45 days of receiving an application. Projects whose value exceeds \$250 million require the approval of the Council of Ministers in addition to the approval of the Commission.

Articles 19 and 20 set out the procedures for obtaining a license from the Commission. Little detail is provided. The application for a license will involve information about the investor's financial competency, prior project history, and the project's economic feasibility and timetable for completion. The approval process will also involve representatives of "the ministries and relevant bodies" in the relevant region.

Although the licensing system envisaged by the investment law applies to both foreign and domestic investors, such systems are likely to be viewed by investors as a bureaucratic hurdle, involving delay, expense, and advocacy on behalf of a particular project. Moreover, foreign investors may be concerned that the involvement of regional bodies in the licensing procedure may make it more difficult to implement projects that are national in scope.

c. Temporary Entry and Exit

Article 12 of the investment law grants foreign investors and other non-Iraqis working on the investment project the right of residency in Iraq and promises to facilitate their entry to and exit from Iraq.

d. Investor Obligations

Under Article 14, a foreign investor must provide the appropriate investment commission (national or regional) an economic and technical feasibility study; notify the appropriate investment commission of the date when it begins commercial activity; and notify the appropriate commission of its adherence to the time schedule for its work plan. The investor must also keep "proper" records audited by a certified accountant in Iraq.

e. Employment

Article 12 of the investment law requires that priority in employment be given to Iraqi nationals, allowing investors to use non-Iraqi workers if it is not possible to employ an Iraqi with the required qualifications and capabilities. Pursuant to the Investment Regulations No. 2 of 2009, at least 50% of the workforce of a project must be Iraqi nationals.

f. Exemptions

Articles 15 through 18 of the investment law set out certain exemptions for investors, including a ten-year exemption (which may be increased to fifteen years by the Council of Ministers) from taxes and fees for projects in the areas of development defined by the

Council of Ministers, and exemptions from certain fees relating to the import of assets and spare parts associated with the project. Additional exemptions from duties and taxes on imports are available for investments in hotels, tourist institutions, hospitals, health institutions, rehabilitation centers, and educational and scientific organizations.

g. Definition of Investment

Article 21 defines the capital contribution to a project that is considered an investment subject to the provisions of the law. The definition includes cash, in-kind assets and rights, capital equipment, and rights such as patents, know-how, and services. While useful for implementing the statute, the definition falls short of definitions of “investment” commonly found in international investment agreements. For example, the U.S. 2004 model BIT includes in the definition of an investment an enterprise, various forms of equity participation in an enterprise, futures, options, certain contracts and contractual rights, and certain licenses and authorizations. Investors should be aware of this shortcoming when deciding what type of investment they want to pursue in Iraq.

h. Dispute Resolution

Article 27 specifically makes investment disputes subject to the jurisdiction of Iraqi courts. Commercial disputes, however, may be submitted to arbitration provided that arbitration is stipulated in the contract between the parties to the dispute.

i. Implementation and Future Regulations

Article 31 gives the Council of Ministers the right to issue regulations to implement the law; issue bylaws to regulate the Commission’s activities. Article 32 gives the Commission the right to issue instructions to complement the Act’s implementation. Based on public records, none of these actions has yet occurred. However, Prime Minister Maliki signed a decree on December 28, 2010 which is intended as the implementing regulations for the amendments to the 2006 Iraqi national investment law.

3. *Iraqi Kurdistan Investment Law*

The Iraqi Kurdistan region enacted its own investment law in 2006. Unlike the national law, it lists the economic sectors to which it applies. These include manufacturing, agriculture, tourism, health and the environment, research and information technology, transportation, telecommunications, banking, insurance, and other financial services, infrastructure, trade services, education, and any other sector that Kurdistan’s investment council decides to add.

The Iraqi Kurdistan investment law parallels many of the provisions found in the national Iraqi investment law and has a wide-range of investment-related provisions, including: exempting investment from taxes and duties for a limited time; establishing both investor rights and investor obligations; providing for severe penalties if investors break the law; establishing regional bureaucratic institutions governing investment; and laying out broad dispute settlement provisions.

A more detailed discussion of the coverage and application of the Iraqi Kurdistan Region investment law is as follows:

a. Rights of Investors

Article 7 provides certain guarantees to the investor similar to those accorded by the national law. These include the right to: insure the project with any insurer, domestic or foreign; utilize local or foreign workers (with a priority given to local workers); transfer profits and interest abroad; transfer the investment to a foreign or domestic investor; and utilize bank accounts for the project both in and outside of Iraq.

b. Investor Obligations

Under Article 8, investors must set out for the Investment Board (discussed in detail below) details about the project, its finances, and its completion; maintain records of materials imported that qualify for customs exemptions; maintain environmental standards; and train and rehabilitate local manpower for the project.

c. Tax Exemptions

Like the national law, the Kurdish law provides for generous tax exemptions. Article 5 exempts a project from all non-customs taxes and duties for ten years. Additional exemptions may be granted for projects in less-developed areas, and for projects jointly owned by national and foreign investors.

d. Penalties

Article 9 provides for the possibility of imposing severe penalties on an investor that breaches the Iraqi Kurdistan investment law or any agreement between the investor and the local authorities. Penalties can include losing ownership of the project and financial penalties.

e. Iraqi Kurdistan Investment Bureaucracy

Article 10 establishes an Investment Board (Board) whose powers are similar to the national-level Investment Commission. Its overall goals are to “set up a suitable environment for investments so as to achieve economic development of the Region.” The Board is also instructed to establish investment strategies, plans, and policies, and to present them to the Council for approval.

The Kurdish law also establishes, in Article 14, a Supreme Investment Council (Council) whose membership includes the prime minister of the region and other regional officials. The primary purpose of the Council is oversight of the Board. Foreign investors may see the Council as yet another layer of bureaucratic complexity to consider when investing in the Kurdish region.

f. Licensing

Article 16 establishes a licensing procedure similar to that found in the national investment law.

g. Dispute Resolution

Article 17 provides dispute settlement provisions that are broader than those found in the national law. Investment disputes are to be settled in accordance with the relevant contract, but may otherwise be submitted to arbitration in accordance with applicable regional law or as provided in dispute settlement provisions found in any international or bilateral agreement to which Iraq is a signatory.

V. Contacts

Investors should take advantage of Department of Commerce resources on the ground in Iraq available to assist them. The Commerce Department's Senior Commercial Officer and Deputy Senior Commercial Officer in Iraq are the best points of contact for potential investors who wish to explore Iraqi investment opportunities. Brian McCleary, the current Senior Commercial Officer, can be reached at Brian.McCleary@trade.gov. Thomas Brennan, the current Deputy Senior Commercial Officer, can be reached at Thomas.Brennan@trade.gov.

VI. Links

The following are links that potential investors may find useful:

Iraqi National Assembly: <http://na-iraqi.com/index.php?lang=english>

The Iraq Trade Information Center: <http://www.iraqitic.com/index.php>

The Central Bank of Iraq: <http://www.cbiraq.org//cb1.htm>

U.S. Department of Commerce Iraq Investment and Reconstruction Task Force:

<http://www.trade.gov/iraq/>

U.S. & Foreign Commercial Service Iraq Website: <http://www.buyusa.gov/iraq/en/>

U.S. Department of State Iraq Websites: <http://www.state.gov/p/nea/ci/iz/>

U.S. Embassy in Baghdad, Iraq: <http://iraq.usembassy.gov/>

USAID Iraq Website: <http://www.usaid.gov/iraq/>

WTO Iraq Accession Website:

http://www.wto.org/English/thewto_e/acc_e/a1_iraq_e.htm

United Nations Assistance Mission for Iraq: <http://www.uniraq.org/>

Official Website of the United States Forces - Iraq: <http://www.usf-iraq.com/>

Republic of Iraq Council of Ministers (Arabic only): <http://www.cabinet.iq/>

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